

Bauer Welding and Metal Fabricators, Inc. and District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO.
Case 18-CA-6957

May 18, 1981

DECISION AND ORDER

Upon a charge filed on November 18, 1980, by District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, and duly served on Bauer Welding and Metal Fabricators, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 18, issued a complaint and notice of hearing on December 16, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 26, 1980, following a Board election in Case 18-RC-12525, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about November 4, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so, and commencing on or about August 29, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union by refusing to provide information requested by the Union. Thereafter, Respondent filed its answer to the complaint, admitting in part, and denying in part, the allegations in the complaint.

On February 2, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on February 10, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Coun-

sel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits its refusal to recognize and bargain with the Union. However, it challenges the Union's certification based on its objections to the election in the underlying representation proceeding.

Review of the record herein, including the record in Case 18-RC-12525, reveals that an election conducted pursuant to a Stipulation for Certification Upon Consent Election on March 20, 1980, resulted in a vote of 32 for, and 20 against, the Petitioner, with no challenged ballots and 1 void ballot. Thereafter, Respondent filed timely objections to the election alleging, in substance, (1) that the Petitioner's campaign literature implied that the Federal Government and the Board supported Petitioner; (2) that the Petitioner misused an official Board document; (3) that the Petitioner's campaign literature contained misstatements of law with respect to an employer's right to cease operations and the effect of a union election victory on existing wages and benefits; (4) that the Petitioner's literature stated that unfair labor practice charges filed with the Board by the Union would be resolved in its favor; (5) that Petitioner threatened, intimidated, and coerced unit employees and supervisory personnel; (6) that the Board agent conducting the election refused to allow the Employer's observer for the first voting session to check the seal and his signature on the ballot box seal prior to the second voting session; (7) that the Petitioner's observers and runners were allowed, over Respondent's protest, to wear campaign buttons and to use other union paraphernalia during the election, thus implying that the Board endorsed the Petitioner.

After investigation, the Regional Director issued his Report on Objections in which he recommended that Respondent's objections be overruled in their entirety and that a Certification of Representative be issued. Thereafter, Respondent filed exceptions to the Regional Director's report. On August 26, 1980, the Board, having considered the Regional Director's report, the Employer's exceptions thereto, and the entire record, adopted the findings and recommendations of the Regional Director and certified Petitioner as the exclusive bargaining agent of the employees in the unit stipulated to be appropriate. It thus appears that Respondent is attempting in this proceeding to relitigate

¹ Official notice is taken of the record in the representation proceeding, Case 18-RC-12525, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we find that Respondent at all material times herein has refused to recognize and bargain with the Union, and that it thereby has violated Section 8(a)(5) and (1) of the Act.³

In its answer to the complaint, Respondent admits that it has refused to furnish the Union with the requested information, but defends its refusal to furnish such information on the grounds that the Union's certification is improper. For the above-stated reasons, we find such a defense without merit. Respondent further states that it is without sufficient information to form a belief as to whether this information is necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of the unit. By letters dated August 29 and September 29, 1980, the Union requested that Respondent furnish information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.⁴

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

³ In its answer to the complaint, Respondent states that it is without sufficient information to form a belief concerning, and, therefore, in effect, denies, the complaint allegation that on or about October 25, 1980, the Union, through the Federal Mediation and Conciliation Service (FMCS), requested Respondent to meet and bargain with the Union. However, the General Counsel has submitted a copy of a letter bearing the above date, sent by FMCS to Respondent. The letter states that, at the request of the Union's business representative, FMCS had scheduled a joint conference and requests that Respondent's representative attend. Respondent does not dispute the validity of this letter. Furthermore, Respondent admits the complaint allegation that since on or about November 4, 1980, it has refused to meet with and to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the unit. Accordingly, we find that Respondent's denial raises no issue warranting a hearing.

⁴ More specifically, the Union requested the names, seniority dates, ages, rates of pay, and classifications of bargaining unit employees, including those on layoff; names of previous bargaining unit members who have returned from, or are currently on, disabled status; incentive, piecework, bonus, or merit increase plans; information concerning the employee profit-sharing plan and/or employee stock purchase plan; retirement

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request. Furthermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the information sought by the Union in its letters of August 29 and September 29, 1980, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act. Therefore, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Minnesota corporation, is engaged in the business of welding and metal fabricating. During the 12-month period preceding issuance of the complaint, a representative period, Respondent, in the course and conduct of its operations, purchased and received at its Mounds View, Minnesota, facility, products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Minnesota. During the same 12-month period, Respondent sold and shipped from its Mounds View, Minnesota, facility products, goods, and services valued in excess of \$50,000 directly to points outside the State of Minnesota.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

or pension plans, including cost to the employees and the Employer, and employee benefits; information concerning insurance and benefits of active, retired, laid-off, and disabled employees and their dependents; Employer/employee monthly insurance premiums for employees and dependents; future changes in the cost of insurance premiums; job descriptions and qualifications; employer work rules; any and all other information not specifically requested which is "relative" and "vital" to "rates of pay, wages, hours of employment, or other conditions of employment" relating to mandatory and permissive subjects of bargaining; a list of all present jobs, projects, and/or work that the Employer has subcontracted to other employers or employers which may be a part of the Employer, including the name of the employee and location, rate per hour the employer charges, number of employees performing subcontracted work, and the reason for subcontracting the work.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees at the Employer's 2159 Mustang Drive, Mounds View, Minnesota facility, excluding office clericals, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

2. The certification

On March 20, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 18, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on August 26, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 25, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 4, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since November 4, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. *The Request for Information and Respondent's Refusal To Furnish It*

Commencing on or about August 29, 1980, and at all times thereafter, and specifically September

29, 1980, the Union has requested Respondent to provide it with information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information. Commencing on or about August 29, 1980, Respondent has refused, and continues to refuse, to provide the Union with the requested information.

Accordingly, we find that Respondent has refused to furnish the Union with information relating to employment conditions and wages of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Bauer Welding and Metal Fabricators, Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union with the information it requested by letters dated August 29 and September 29, 1980.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Bauer Welding and Metal Fabricators, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees at the Employer's 2159 Mustang Drive, Mounds View, Minnesota facility, excluding office clericals, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 26, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 4, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about August 29, 1980, and all times thereafter, to furnish the Union with information concerning rates of pay, benefits, seniority dates, work rules, and related information as requested by the Union in its letters of August 29 and September 29, 1980, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bauer Welding and Metal Fabricators, Inc., Mounds View, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees at the Employer's 2159 Mustang Drive, Mounds View, Minnesota facility, excluding office clericals, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization with the information requested in its letters of August 29 and September 29, 1980, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with the information requested in its letters of August 29 and September 29, 1980, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) Post at its Mounds View, Minnesota, facility copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named Union by refusing to furnish said Union with the information requested in its letters of August 29 and September 29, 1980, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive bargaining representative of all employees in the bargaining unit, described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees at our 2159 Mustang Drive, Mounds View, Minnesota facility, excluding office clericals, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL, upon request, bargain collectively with the above-named Union by furnishing it with the information it requested concerning the unit employees' rates of pay, benefits, seniority dates, work rules and related information.

BAUER WELDING AND METAL FABRICATORS, INC.